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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MUHAMMAD MOHSIN,

Plaintiff,

v.

MOHAMAD SAIFUL HASSAN et al.,

Defendants and Respondents;

REPUBLIC OF BANGLADESH,

Intervenor and Appellant.

E068261

(Super.Ct.No. RIC1404227)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge.

Affirmed.

Kaplan, Kenegos & Kadin and David Scott Kadin for Intervener and Appellant.

No appearance for Plaintiff.

Law Office of Sunil A. Brahmbhatt, Sunil A. Brahmbhatt and Timothy I.

Mulcahey for Defendants and Respondents Mohamad Saiful Hassan and Ruhi Fatema Hassan.

Muhammad Mohsin (Mohsin) sued Mohamad Saiful Hassan (Hassan), Ruhi Fatema Hassan (Ruhi)¹, and others (the underlying lawsuit). The Republic of Bangladesh (the Republic) intervened in the underlying lawsuit. The trial court bifurcated and stayed the Republic’s portion of the lawsuit. The underlying lawsuit was dismissed with prejudice due to a failure to prosecute. (Code Civ. Proc., § 581, subd. (d).) Hassan and Ruhi (collectively, the Hassans) demurred to the Republic’s first amended complaint in intervention (FAC). The trial court sustained the demurrer without leave to amend only as to the Hassans. The Republic contends the trial court erred by sustaining the demurrer and denying leave to amend. We affirm the judgment.²

FACTUAL AND PROCEDURAL HISTORY

A. UNDERLYING LAWSUIT

In 2012, Mohsin or Hassan purchased real property in Corona (the property) for \$637,500 plus closing costs, for a total of \$639,000. Mohsin asserted Mohsin purchased the property through his sister, who resides in Dubai, United Arab Emirates. Hassan asserted Hassan purchased the property but placed the title in Mohsin’s name to assist

¹ We use Ruhi’s first name for the sake of clarity because two parties have the last name of Hassan; no disrespect is intended.

² The Hassans request this court take judicial notice of seven documents filed in the underlying lawsuit and the appeal from the underlying lawsuit. We grant the request as to the Hassans’ trial brief and the notice of entry of judgment of dismissal. (Evid. Code, § 452, subd. (d).) We deny the request as to the other five documents. (*AL Holding Co. v. O’Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 1310, 1313, fn. 2 [“court must decline to take judicial notice of material that is not relevant”].)

Mohsin with his immigration application. Hassan managed the property, which was rented to a tenant, while Mohsin was in Bangladesh.

In 2014, Hassan or Mohsin decided to sell the property. Hassan hired Strata Realty and Adam Silverman to help him with the sale. The property was sold to Geltmore 4G, LLC, which belonged to Silverman's family. Because Mohsin was not present, in order to sell the property, Hassan filed a fictitious business name statement in Riverside County. The grant deed stated, “ ‘Mohamad Saiful Hassan, who acquired title as, Muhammad Mohsin.’ ” (Boldface and italics omitted.) In April 2014, Geltmore acquired title to the property. In the underlying lawsuit, Mohsin sued Hassan, Geltmore, and others for the money that resulted from the sale of the property (the sale proceeds), alleging “Hassan sold it without his authority, and that the other parties were either negligent in connection with the purchase or not bona fide purchasers.”

B. COMPLAINT IN INTERVENTION

Mohsin and Hassan are citizens of Bangladesh, although Hassan may have dual citizenship with America. Bangladesh restricts its citizens' foreign transactions, and it requires citizens to obtain government approval to own real or personal property outside of Bangladesh. Citizens of Bangladesh must disclose any ownership of foreign property on their tax returns. Mohsin did not report the property on his tax returns.

Mohsin and Hassan, at different times, went to the Republic's consulate in Los Angeles to seek assistance with evidence for the underlying lawsuit. Through those visits, the Republic learned of the property and the underlying lawsuit. The Republic commenced an investigation into “money laundering and tax evasion by Mohsin and

forgery by Hassan.” Bangladeshi law enforcement concluded “Mohsin violated Bangladesh money laundering laws, income tax laws, and other laws by illegally transferring approximately \$639,000 [of] money out of Bangladesh to buy the Corona Property with his business partner . . . Hassan.”

The Republic filed the FAC in the underlying lawsuit. In the FAC, the Republic alleged, “Mohsin’s acquisition of the Corona Property was part of a money laundering scheme in violation of Bangladesh law.” In the Republic’s first cause of action, it alleged Mohsin committed “various wrongful acts” in “violation of [a] statute,” which resulted in the Republic being damaged. In the Republic’s second cause of action, it alleged the Republic was “entitled to all monies from the sale of the Corona Property by Hassan.” The Republic requested declaratory relief. In the third cause of action, the Republic alleged Hassan committed “various wrongful acts” in “violation of [a] statute,” (boldface and all caps omitted) which resulted in the Republic being damaged. The Republic sought damages, a declaration of the parties’ rights and duties relative to the sale proceeds, and that Mohsin and Hassan be deemed constructive trustees of the sale proceeds for the benefit of the Republic.

C. DEMURRER

The Hassans demurred to the FAC. The Hassans asserted that, on October 12, 2016, the trial court dismissed the underlying lawsuit with prejudice due to Mohsin’s failure to prosecute the case. The Hassans contended that, in order for the Republic to obtain declaratory relief, there had to be an actual controversy relating to the parties’ rights and duties. The Hassans asserted that no controversy existed due to the dismissal

of the underlying lawsuit. Therefore, the Hassans reasoned, the Republic could not be granted declaratory relief.

The Hassans contended the Republic lacked standing to seek declaratory relief because the Republic was “not a party to the alleged Mohsin—Hassan contract.” The Hassans contended the Republic alleged a contract existed between Hassan and Mohsin because the Republic referenced a business relationship. The Hassans contended the Republic failed to allege if the contract was oral or written. Further, the Hassans asserted the Republic could not receive declaratory relief because the Republic was seeking to remedy a past wrong—not prevent future issues from arising.

The Hassans contended the third cause of action failed because it was unclear what statute was allegedly violated. To the extent the FAC alleged fraud by Hassan, the Hassans asserted the FAC was too vague to support a cause of action for fraud.

D. OPPOSITION

The Republic opposed the demurrer. As to the second cause of action, the Republic asserted the dispute did not have to arise from a contract. The Republic contended it alleged a controversy existed between the parties because Mohsin alleged the sale proceeds belonged to Mohsin, while Hassan alleged the sale proceeds belonged to Hassan, and the Republic alleged the sale proceeds belonged to the Republic. The Republic contended it had standing to pursue the case because the Republic “has a current and direct interest in the proceeds from the sale of the Corona property.”

As to the third cause of action, the Republic asserted it alleged sufficient facts because it described how Hassan filed a fictitious business name statement that was false in order to sell the property. The Republic contended it set forth sufficient facts for Hassan's "violation of [the] law and fraudulent conduct notwithstanding that specific code sections are not alleged."

E. HEARING

The trial court held a hearing on the demurrer. The trial court's tentative ruling was to sustain the demurrer without leave to amend. The trial court explained that because the underlying lawsuit was dismissed, the FAC also had to be dismissed. The Republic contended that the underlying lawsuit was "not res judicata or collateral estoppel to the Republic" because the Republic "was not a party to the action. It was not bound by the dismissal. It has rights against Mohsin and Hassan."

The Hassans asserted the Republic did not have a claim directly against the Hassans. The Hassans contended the Republic "would have to go through Mohsin's claims, which are dismissed; and they're subject to res judicata." The Republic asserted it was a party to the underlying lawsuit because the court permitted the Republic to intervene in the case. The court said, "The fact you are allowed to intervene was not a finding that you were a party. It allowed you to come in and—and make your allegations."

The Hassans asserted the Republic was permitted to intervene for the limited purpose of claiming \$150,000 in settlement funds that Mohsin received from one or more of the defendants in the underlying lawsuit. The Hassans contended the Republic was now trying to expand upon its intervention to become a full party to the case. The Hassans contended the Republic had no claim against them unless Mohsin was successful in his claims, and Mohsin's claims had been dismissed with prejudice.

The trial court said, "[T]here are no allegations that the Republic has a direct interest in any of the subject proceeds of the sale of property. What Bangladesh is saying is that citizens need to get government approval before purchasing real property outside of Bangladesh. . . . And while the Republic may have interest related to Bangladesh law or Bangladesh tax law in Bangladesh, the Republic does not allege a cause of action between it and Mohsin or Hassan under California law nor any damages. So the Republic has not established that it has standing in this action.

"The cause of action alleges there is an actual controversy between the Republic and Mohsin and Hassan based on its contention it is entitled to all the money from the sale of the property, but there are no factual allegations that establish this nor can there be. [¶] And then the Third Cause of Action is for a violation of statute and for fraud, and those have not been pled with particularity—with particularity nor can they be. The court doesn't see any way that they can cure the defects, and it will be sustained without leave."

DISCUSSION

A. DISMISSAL OF THE UNDERLYING LAWSUIT

The Republic contends the trial court erred by concluding that the Republic's portion of the case terminated when the underlying lawsuit was dismissed with prejudice.

“ ‘An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons’ [Citation.] The purpose of allowing intervention is to protect others potentially affected by a judgment, thus obviating delay and multiplicity of suits. [Citations.] The intervener becomes a party to the action, with all of the same procedural rights and remedies of the original parties.” (*Catello v. I.T.T. General Controls* (1984) 152 Cal.App.3d 1009, 1013-1014, fn. omitted.) Although a complaint in intervention does not create a separate action, if the complaint in intervention could have been brought independently, then it can survive dismissal of the underlying action. (*Id.* at pp. 1014-1015; *Lohnes v. Aston Computer Products* (2001) 94 Cal.App.4th 1150, 1153 [“complaint in intervention could have been maintained notwithstanding plaintiff's voluntary dismissal”].)

Accordingly, the Republic is correct that its portion of the case did not automatically terminate when the underlying lawsuit was dismissed with prejudice. In order for the Republic's portion of the case to proceed, the Republic must show the trial court erred in determining the complaint in intervention could not have been brought independently.

The Republic contends, without any citation to legal authority, that it could have sued Hassan directly. (See *Schmidt v. Bank of America* (2014) 223 Cal.App.4th 1489, 1498, fn. 6 [failure to cite legal authority waives the issue].) The Republic alleges that because Hassan fraudulently presented himself as Mohsin, e.g., filing a false fictitious business name statement, Hassan is Mohsin for purposes of the Republic's lawsuit. The Republic explains, "[S]ince Hassan represented himself to be Moshin [*sic*], the Republic's [*sic*] claims against the 'real' Moshin [*sic*] did not disappear when the court dismissed the 'real' Moshin's [*sic*] complaint; rather, the Republic still had, and has, . . . pleaded . . . that Hassan was standing in the shoes of Moshin [*sic*] and, therefore, the Republic's claim of rights against Moshin [*sic*] would inure against Hassan."

Due to the lack of legal citations, it is unclear on what legal theory the Republic intended to proceed. For example, the Republic's argument could be understood as attempting to assert a form of estoppel; however, the Republic does not explain how the reliance factor would be fulfilled. (See *HPT IHG-2 Properties Trust v. City of Anaheim* (2015) 243 Cal.App.4th 188, 201 [reliance is an element of estoppel].) It is also possible the Republic is attempting to assert a legal theory related to a declaration against the party's interest, wherein Hassan is barred from disclaiming that he is not Mohsin after allegedly filing a fictitious business name statement claiming that he is Mohsin. (See e.g. *People v. McKenna* (1938) 11 Cal.2d 327, 333.)

The point herein is that we do not know under what legal theory the Republic intended to proceed. This court is not inclined to create a legal theory and argument for the Republic so as to assist it with reversing the trial court's judgment. (*Doe v. Lincoln*

Unified School Dist. (2010) 188 Cal.App.4th 758, 767.) Accordingly, due to the lack of legal authority supporting the Republic's contention, we conclude the issue has been forfeited. (*Los Angeles Unified School Dist. v. Casasola* (2010) 187 Cal.App.4th 189, 212.) While the Republic has shown that the dismissal of the underlying lawsuit did not automatically terminate the Republic's portion of the case, the Republic has failed to show that its portion of the case could be independently pursued.

B. STANDING

The Republic contends it has standing to sue Hassan because (1) the trial court permitted the Republic to file a complaint in intervention, and (2) "Hassan[was] standing in Moshin's [*sic*] shoes" which created the Republic's "direct and immediate interest in the subject matter of the action (the illegally taken cash from the Republic)."

We apply the de novo standard of review to this issue of standing. (*San Luis Rey Racing, Inc. v. California Horse Racing Bd.* (2017) 15 Cal.App.5th 67, 73.) "[A]ny person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding." (Former Code Civ. Proc., § 387, subd. (a).)

The Republic provides little explanation of Bangladeshi law. As a result, it is unclear what interest the Republic has in these proceedings. The Republic asserts Mohsin broke the law in Bangladesh, but does not explain why that gives the Republic an interest in this case. For example: (1) it is possible Mohsin could be subject to a fine in Bangladesh, which could be paid with any money from Mohsin, thus the Republic would not necessarily have an interest in this particular money such that the Republic

would need to sue Hassan; (2) it is possible Bangladeshi law requires Mohsin to forfeit the property to the Republic, and thus Bangladesh would be the owner of the property, and, as a result wants the sale proceeds from Hassan; or (3) it is possible Mohsin was found to be innocent of the charges in Bangladesh, and thus the Republic has no interest in the proceedings. The Republic has not explained why Bangladeshi law gives it an interest in the money held by Hassan.³ As a result, we cannot conclude the Republic has standing.

C. AMENDMENT

The Republic contends the trial court erred by not permitting the Republic to amend its FAC.

“[U]pon sustaining a demurrer to a first amended complaint, the court may deny leave to amend when the plaintiff fails to demonstrate the possibility of amendments curing the first amended complaint’s defects.” (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579.) “ ‘To satisfy that burden on appeal, a plaintiff “must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.” [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the “applicable substantive law” [citation] and the legal basis for amendment, i.e.,

³ The Republic’s FAC provides, “As set forth in the attached Declaration of Md. Alamgir Hossain, the Director of the Central Intelligence Cell (‘CIC’) of the National Board of Revenue, Dhaka, Bangladesh, Mohsin violated Bangladesh money laundering laws, income tax laws, and other laws by illegally transferring approximately US \$639,000 money out of Bangladesh to buy the Corona Property.” We do not find a declaration attached to the FAC.

the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclus[ory]. [Citation.] [¶] The burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.] Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend.’ ” (*Id.* at pp. 579-580.)

The Republic fails to explain how it will amend its FAC to state a legally viable cause of action. For example, the Republic writes in its appellant’s opening brief, “[T]he trial court concluded the First Amended Complaint-in-Intervention failed to assert any allegations that it has a direct interest in the proceeds of the sale of the property. Again, without permitting Intervenor/Appellant the opportunity to amend its pleading.” The Republic does not explain how it will cure the defect in the FAC to allege it has an interest in the sale proceeds. For example, the Republic does not explain why Bangladeshi law gives the Republic an interest in the property, such that the sale proceeds would belong to the Republic. Accordingly, because the Republic has not explained how it would successfully amend the FAC, we conclude the trial court did not err by denying leave to amend.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER

J.

We concur:

McKINSTER

Acting P. J.

RAPHAEL

J.